
TESTIMONY BEFORE THE U.S HOUSE OF REPRESENTATIVES COMMITTEE ON
GOVERNMENT REFORM
SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND
INTERNATIONAL RELATIONS

JUNE 6, 2006

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CHAIRMAN
PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD
THE WHITE HOUSE
ACOMPANIED BY
THE HONORABLE ALAN CHARLES RAUL
VICE CHAIRMAN

Introduction

Chairman Shays, Vice-Chairman Marchant, Ranking Member Kucinich, and Members of the Subcommittee:

Thank you for providing this opportunity to testify on the organizational efforts of the Privacy and Civil Liberties Oversight Board. Vice Chairman Raul and I are appointed by the President with the advice and consent of the Senate and our Board is, by statute, a part of the Executive Office of the President, but is not part of the President's immediate staff. We appear before you today like any agency official subject to Senate confirmation would, and we are pleased to be here with you today.

Since being administered our oaths of office on March 14, 2006, the five Board members have worked diligently to organize, hire a staff, educate ourselves, and begin to exercise our statutory responsibilities. Within the context of protecting the Nation against terrorism, at the heart of our American identity and heritage is the Federal government's commitment to balance national security needs with the privacy and civil liberties that are guaranteed by our

Constitution. The Board takes its responsibilities very seriously, and we seek to convey this to you today.

Organization, Mission and Responsibilities

Recommended by the July 22, 2004 report of the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission), the Privacy and Civil Liberties Oversight Board was established by the Intelligence Reform and Terrorism Prevention Act of 2004. It consists of five members appointed by the President. The Senate confirmed Vice Chairman Raul and me on February 17, 2006. The other Board members are Lanny J. Davis, Theodore B. Olson and Francis X. Taylor. We held our first meeting on March 14, 2006.

The Intelligence Reform and Terrorism Prevention Act authorizes the Board to advise the President and other senior executive branch officials as to whether privacy and civil liberties protections are appropriately considered in the development and implementation of laws, regulations, and executive branch policies related to efforts to protect the Nation against terrorism. This includes advising as to whether adequate guidelines, supervision, and oversight exist to ensure appropriate protection of privacy and civil liberties.

In addition, the Intelligence Reform and Terrorism Prevention Act specifically charged the Board with responsibility for reviewing the terrorism information sharing practices of executive branch departments and agencies to determine whether they are following guidelines designed to protect privacy and civil liberties, including those issued by the President in his memorandum to executive departments and agencies of December 16, 2005, and additional guidelines currently being developed by the Information Sharing Environment Program Manager in the Office of the Director of National Intelligence.

Free of day-to-day management or operational responsibilities for homeland security, the Board is able to review and analyze information and policies and render advice that reflects an objective view as to whether privacy rights and civil liberties are being appropriately considered in efforts to protect the Nation against terrorism. We will provide our advice and make our recommendations to the President and executive branch department and agency heads as appropriate, and we expect to have broad access to information necessary to fulfill our vital advisory and oversight roles. Additionally, the Board will provide an annual report to Congress.

Fact Gathering and Issue Identification

The scope of the Board's authority under the Intelligence Reform and Terrorism Prevention Act is obviously broad. Congress envisioned the Board being empowered to carry out its mission in two equally important ways. First, it is to advise policymakers in the development of laws, regulations, and policy. Second, as stated previously, it is to conduct oversight by reviewing government actions after those laws, regulations and policies are implemented. In exercising these authorities, the five member Board seeks to operate largely by consensus.

Given this scope, the members must exercise judgment in gathering information and reviewing the numerous policy issues in which the Board might play a role to determine where it can be of most value to the American people, the President, and the executive branch in exercising these broad responsibilities.

The Board has met in person four times to date, with additional meetings scheduled throughout the rest of the year. The Board has also relied on conference calls and other ongoing communications to continue to make substantial progress in between formal meetings. In addition, we have met with a number of organizations and individuals considered experts in

privacy and civil liberties matters, both within the federal government and in the private and non-profit sectors. In these meetings, we have sought to gather the information necessary to begin prioritizing those issues most in need of our attention. We have made great progress in this regard. We have met with senior leadership of the American Civil Liberties Union (ACLU), the Center for Democracy and Technology (CDT), and the former Clinton Administration OMB Chief Counselor for Privacy, Peter Swire. We are scheduled to meet in the near future with senior officials of the American Conservative Union and the Markle Foundation, which has spent a great deal of time studying issues of privacy and civil liberties in the context of homeland security and the information age. Additional fact-finding will take members of the Board to the National Counterterrorism Center and the National Security Agency in the next few weeks. Additionally, Vice Chairman Raul and I had a very useful and productive telephone conference last month with the Chairman of the 9/11 Commission, Governor Thomas Kean, to discuss with him the status of our efforts to stand this Board up. We deeply appreciate the Governor's support of this Board and its efforts.

Within the federal government, we have met with many senior administration officials, including then-White House Chief of Staff Andrew Card; Stephen J. Hadley, Assistant to the President for National Security; Frances F. Townsend, Assistant to the President for Homeland Security and Counterterrorism; and Harriet E. Miers, Counsel to the President. In addition, we have also met with John Negroponte, Director of National Intelligence and then-Deputy Director, General Michael Hayden, and have received guidance from the Department of Justice (DOJ), Department of Homeland Security (DHS), and the Office of Management and Budget (OMB). Our support staff has begun to build institutional lines of communication and working

relationships with the privacy and civil liberties officers in the executive branch, with whom we expect to work closely.

All these meetings have proven to be immensely useful. Through them, we have been able to identify several areas of initial interest where we believe the Board can play the constructive role envisioned by Congress when it enacted the Intelligence Reform and Terrorism Prevention Act.

Issue Prioritization

The specific issue mandated by our enabling statute obligates the Board to assist the executive branch in the implementation of information sharing guidelines. To that end, at our most recent Board meeting we met with Ambassador Thomas McNamara, Program Manager in the Office of the Director of National Intelligence (ODNI). Ambassador McNamara, as you know, has been selected and designated to oversee the implementation of the Information Sharing Environment, including drafting appropriate guidelines.

Beyond information sharing issues, the Board hopes to focus its energies on those issues of practical concern to the American public as the Federal government protects the Nation from terrorism. The President has made clear that the war against terrorism must also respect the privacy rights and civil liberties of the American people. We will assist the executive branch in fulfilling this commitment.

Board Operations

The Intelligence Reform and Terrorism Prevention Act gave the Board a broad mandate to review and provide advice to the President and to federal agencies, and contains specific provisions which help insure that the Board will have access to the information it needs to do its work. To the extent allowed by law and consistent with national security, executive branch

agencies are required to cooperate with the Board. In fact, the statute requires agency heads to ensure agency compliance with requests for information. Any disagreements between the Board and an agency head will be presented to the Attorney General for resolution.

As noted by Senator Lieberman during the legislative debate, the Board has no authority to veto or delay executive branch actions or to order specific remedial actions. The Board's legal authority derives primarily from the compelling power of suasion: the ability to know what is going on, to develop informed assessments of whether privacy and civil liberties are being, or have been, appropriately considered, to make observations and provide comments, and to render advice to appropriate executive branch leadership – up to and including the President – when issues are identified. The Board's opportunity to report annually to Congress regarding its advice and oversight functions also provides a further vehicle for advancing the Board's mission. The Board is neither charged with nor equipped to handle case specific adjudication or resolve individual constituent problems. Any specific matters involving particular parties that are brought to the attention of the Board will be referred to the appropriate agency for investigation and/or resolution.

In creating this Board, Congress considered and rejected giving it subpoena power. We agree with Congress' determination. Indeed, it is incongruous to even consider an office within the White House requiring subpoena power to compel executive branch agencies or officials to provide it with information. The Board expects to enjoy the support of the White House staff and Department of Justice in obtaining the executive branch information it needs to carry out its responsibilities.

With regard interaction with the public in general, while the Board is not designed or equipped to handle individual case work, citizens with concerns they would like to report to the

Board may do so through its web site or e-mail address (www.privacyboard.gov or privacyboard@who.eop.gov)

Conclusion

Setting up any new institution takes time and energy. We are proud of how far we have come in the short time since our swearing-in. Personnel security clearances are in place. We have hired our Executive Director who is building a professional and administrative support staff through direct hires and detailees. We have a new suite of offices within the White House complex, half a block from the Eisenhower Executive Office Building, which includes secured space for classified matters. And our budget and resources are sufficient to pursue our mission.

Most importantly, we are grateful that we have received tremendous support from all levels of the White House staff, the Executive Office of the President, and the Federal departments and agencies with whom we will continue to work. Congress conferred important responsibilities on this Board, and we look forward to working with Congress as we embark upon this important mission. Thank you again for having us. Vice-Chairman Raul and I would be happy to take your questions.